
**COMMISSION MEETING
THURSDAY, MARCH 8, 2001
MINUTES**

Chair McLaughlin called the meeting to order at 1:30 p.m., at the DoubleTree Hotel in Pasco. Chair McLaughlin announced that the ex officio members of the Commission were not present due to the legislative session. She introduced the following attendees:

MEMBERS PRESENT:

**COMMISSIONER LIZ McLAUGHLIN, CHAIR;
COMMISSIONER GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;
COMMISSIONER ALAN PARKER**

OTHERS PRESENT:

**BEN BISHOP, Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

Chair McLaughlin noted the Gambling Commission offices and staff fared very well during the earthquake. On behalf of the Kennewick Chamber of Commerce, **Commissioner Ludwig** welcomed the Gambling Commission back to Kennewick. **Chair McLaughlin** introduced and welcomed Special Agent Lynne Curtis who works in the Spokane area and is participating in our agency partnership program.

1. REVIEW OF AGENDA:

Amy Patjens, Manager, Communications & Legal Department, reported there were no additions or corrections to Thursday's agenda. A legislative report is scheduled to be provided on Friday by Deputy Director Ed Fleisher, and three rules are slated for discussion. The first rule deals with using electronic gambling equipment in promotional contests of chance. Staff will ask that the rule be withdrawn because they have determined it would be impossible to draft a rule to cover every possibility. Staff will also ask the Commission to continue to evaluate different devices as they come forward on a case-by-case basis. Ms. Patjens noted the demonstration scheduled by Digideal relating to the electronic facsimilies of cards rule, will be provided next month. The last rule on Friday's agenda is a petition for a rule change by a licensee dealing with decreasing the threshold amount when licensees can take advantage of the two-part payment plan.

2. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:

Commissioner Forrest made a motion seconded by **Commissioner Orr** to approve the new licenses, changes and tribal certifications listed on pages 1 through 16 of the agenda packet under License Approvals. *Vote taken; the motion carried with five aye votes.*

3. GROUP IV QUALIFICATION IV REVIEWS:

Rotary Club of Columbia Center, Kennewick:

Derry Fries, Assistant Director, pointed out a modification has been made to the qualification review reporting format. Because there have been questions on "other gambling activities" in the revenue area, (non-gambling activities and other

revenues, which is Bingo income), a line for "Punch Board and Pull Tab and Other Gambling Net Income," has been added. A footnote clarifies this includes amusement games and raffle income.

Mr. Fries noted the Rotary Club of Columbia Center was formed in 1985. Its purpose is to provide humanitarian service, to encourage high ethical standards in all vocations, foster development of acquaintances as an opportunity for service and to encourage goodwill, understanding, and peace in the world. Licensed since 1989, the organization has 92 active members and a 10-member board, which includes five officers. The organization has 75 volunteers who provided services to over 500 individuals. The Club provides financial assistance to many community service programs in the Tri-Cities area. Programs include a Tri-tech Vocational Skills Center, Children's Crisis Nursery, Children's Hospital Guild, Campfire Girls, Tri-Cities Cancer Center, and many others. They awarded 22 college scholarships during this period – 11 to local area students and 11 to foreign exchange students. In addition, as part of their Rotary International role, they provided disaster relief in Turkey, Greece, and provided other international humanitarian efforts.

For the fiscal year ending June 30, 2000, the organization met its required combined net income for their Class I Bingo license by achieving a 14.4 percent net return. The organization's year-to-date net return as of September 30, 2000, was 10.73 percent. The organization met its program and supporting services expenditure requirements and did not have excessive reserves. No charges are pending against this organization as of this date. Based on the review, staff recommends the Rotary Club of Columbia Center in Kennewick be approved as a charitable organization authorized to conduct gambling activities in the state of Washington. **James Savelli**, Primary Gambling Manager, was available to respond to questions.

Commissioner Forrest asked how they accomplished their goals while everyone else seemed to be having trouble. **Mr. Savelli** responded that they are not doing as well either, this year has become tougher. Their net income year-to-date through the end of February is approximately 10 percent. He said their emphasis has been on controlling their costs and getting their building paid off. They built a new building in 1997 and paid their mortgage down which reduced their monthly debt service by approximately \$4,000. He affirmed there is no simple formula and that it has become a matter of controlling costs as tightly as possible and hoping for the best.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve the Rotary Club of Columbia Center in Kennewick as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion passed with five aye votes.*

Sister Rebecca Berghoff Foundation, Union Gap:

Derry Fries, Assistant Director, reported this organization was formed in 1990. The Foundation's mission is to provide operating funds to St. Joseph Elementary and Marquette Middle Schools. They have been licensed since 1990 and have 17 active members. Of those 17 members, four are officers of the governing board. The organization donated in excess of \$350,000 in cash to the St. Joseph/Marquette Schools, and an additional \$140,000 was deposited in an endowment account. For the fiscal year ending December 31, 1999, the organization achieved a combined net return of 18.6 percent for its J Class Bingo license. Under the Net Return Moratorium, they were only required to meet a net return of 7 percent. Their year-to-date net income as of December 31, 2000, was 14.5 percent. The foundation met its program and supporting services and expenditure requirements, and they did not have excessive reserves. There are no administrative pending charges against the organization. Based on the review, staff recommends that Sister Rebecca Berghoff Foundation of Union Gap be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. **Theresa Smith**, Bingo Manager, was available to answer questions.

Commissioner Ludwig asked if they were located in Union Gap at the south end of Yakima and if they were the closest Bingo operation in that area to Legends Casino. **Ms. Smith** affirmed. He noticed that while their non-gambling revenue had maintained a good balance, their Bingo income had just about doubled. **Ms. Smith** affirmed that 1999 was a good year. Commissioner Ludwig suggested that they must have good management. Ms. Smith said this year would not be as profitable because of expenses they cannot control. She reported their 10-year lease on the building expired and rent went up \$1,000 a month. Commissioner Ludwig congratulated the organization on their good efforts and advised that it was refreshing to see they were doing pretty well under the circumstances.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve Sister Rebecca Berghoff

Foundation in Union Gap as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion passed with five aye votes.*

4. PHASE II REVIEW:

Lancer Lanes, Clarkston:

Cally Cass-Healy, Assistant Director, reported this organization, also known as Bridge Street Connection Sports Bar, is a commercial restaurant, lounge, bowling center and card room. They obtained their gambling license under DSK Incorporated, which is equally owned by David Prall, CEO, Kathy Prall, Financial Officer, and David Prall, who is a stockholder. The owners do not hold an interest in any other card room in Washington. Lancer Lanes submitted their original card room internal controls on July 17, 2000, and their first day of house-banked operation was August 11, 2000. They currently operate five house-banked tables, including one Three-Card Poker, one Lucky Ladies, one Blackjack and two Spanish 21 tables. They also operate one Poker table with fees collected based on time. Agents performed a comprehensive investigation including a review and observation of key operating departments and a review of gaming and organizational records. The city of Clarkston was contacted confirming the licensee was current with all local card room taxes. In addition, Chief Brown of the Clarkston City Police Department was contacted to determine local and departmental impacts from house-banked gaming at Lancer Lanes. They reported they have not seen any significant impacts due to the Lancer Lanes house-banked card room operation. All violations noted during the review were verified as corrected during follow-up inspections. Based on the review, staff recommends that Lancer Lanes in Clarkston be approved to operate a Phase II wagering limits.

Commissioner Ludwig asked if they had already gone up to the Phase II wagering limits. **Ms. Cass-Healy** advised they did not have their temporary approval for that at this point, they had just received notice of the increased limits yesterday. **Chair McLaughlin** welcomed the Prall's. **Mr. Prall** reported that he has been in business for himself for approximately 30 years, and that he has always tried to work with the community to provide good, stable work for everyone. Chair McLaughlin wished them good luck as they transition from the logging industry to the gaming industry.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve Lancer Lanes located in Clarkston for Phase II wagering limits. *Vote taken; motion passed with five aye votes.*

5. NISQUALLY TRIBE – PHASE II REVIEW:

Mike Tindall, Program Manager, Tribal Gaming Unit, introduced Doug Boone, General Manager, who introduced the Chairman of the Tribe, Mr. John Simmons and Samuel Wetzler, Director of the Tribal Gaming Agency. It was affirmed that no one from the Thurston County government was present

Mr. Tindall reported the Nisqually Indian Tribe was a federally recognized tribe of approximately 500 enrolled members. The Tribe's reservation is located between the cities of Yelm and Lacey near Olympia in Thurston County. On May 25, 1995, Governor Mike Lowry and Tribal Chairman Michael Steppeton signed the Tribal State Compact for Class III Gaming between the Tribe and the state of Washington. The Nisqually Tribe's Red Wind Casino opened for business on May 1, 1997, in the building that previously housed the Nisqually Tribal Bingo Hall. Currently the staff at Red Wind Casino includes a total of 263 employees, 43 are enrolled members of the Nisqually Tribe, their descendants and/or spouses. An additional 45 employees are Native American or of Native American descent with tribal affiliations other than Nisqually.

Primarily due to their location, the Nisqually Tribe has opted to remain at Phase I level of operation since their casino opened. **Mr. Tindall** noted this is the only tribe that has not pursued Phase II status at the earliest possible time. The Nisqually Tribe is primarily interested in increasing their hours of operation; however, they will be considering a major expansion in the near future and may utilize higher wagering limits and additional gaming stations at that time.

Mr. Tindall explained that the Tribal State Compact allows for two levels of operation for Class III gaming – Phase I and Phase II. Phase I allows 112 hours of operation per week on an annualized basis, with 31 tables of gaming with an option of an additional table for charity purposes, and \$250 maximum wagering limits. Phase II, if approved, would allow the tribe to operate up to 140 hours per week on an annualized basis, and allow them up to 50 tables of gaming with two additional optional tables for charity, and \$500 maximum wagering limits. The Phase I limits are in effect for the first six months of operations. After, or at the point of six months of operations and contingent upon the successful completion of a special Phase II Review, the tribe may be allowed to go to the Phase II level at the discretion of the

Commission. The focus of the six-month or Phase II Review is outlined in the Compact, Section III,H,2, which states that any increase beyond the Phase I limits is conditioned upon the following criteria: 1) That there have been no violations of the provisions of the Compact that have resulted in sanctions imposed by the Federal District Court or the National Indian Gaming Commission. Investigators found none. 2) There are no violations of the Compact which are substantial or due to repetition would be deemed material. As listed in the case report, there were several minor violations of the Compact, however, the violations were not substantial or repetitive in nature and were judged by staff to be immaterial for this purpose. Mr. Tindall noted the violations noted at the time of the report have already been corrected. 3) That there have been no material adverse impacts on the public health, safety or welfare of the surrounding communities in the nature of criminal activities directly related to the operation of the Class III gaming facility. In checking with the local jurisdictions, investigators found there were no such impacts. 4) That there have been no material violations of Appendix A of the Compact, and staff found no material violations of Appendix A. 5) The Tribal Gaming Commission developed a strong program of regulation and control demonstrating an adequate level of proficiency which included the hiring of trained tribal gaming agents and independent management and reporting structures separate from that of the gaming facility or tribal bodies. Lastly, that a strong and consistent presence be maintained within the Class III gaming facility. Mr. Tindall affirmed that staff's review confirmed that the Tribal Gaming Commission met the standard, and confirmed that the Nisqually Indian Tribe paid all necessary fees to the Washington State Gambling Commission pursuant to Section 13 of the Compact.

As a result of the review, staff recommends unconditional approval for Phase II operation. **Mr. Tindall** reported the government of the Nisqually Indian Tribe and their Tribal Gaming Commission staff was very responsive to and cooperative during the review. Mr. Tindall introduced John Simmons, Tribal Chairman.

Chairman John Simmons identified some of the benefits for the tribe with the approval of the Phase II process. The Nisqually Tribe would see increased revenues, which would be used for programs such as Head Start. It would also allow their members to seek economic independence and to get off some of the existing programs. It would create greater employment opportunities for non-tribal communities as well, and prepares the tribal members for a competitive career. He reported a number of their tribal members have gone to work at the casino – they've gone through the training programs and a number of their members have gone on to work in other careers. Chairman Simmons affirmed they plan to do a future expansion of their existing casino, but it would be contingent on the approval of Phase II limits. The expansion would also allow the casino to expand its current customer base. He reported their tribe is very conservative; they will fund the project themselves. He thanked the Commissioners for their time.

Chair McLaughlin commended Chair Simmons and his tribe for their goals and indicated they must be very well managed. **Chair Simmons** affirmed they take pride in their management. Chair McLaughlin asked if there were any questions or additional comments; there were none.

Commissioner Orr made a motion seconded by **Commissioner Forrest** to approve the Nisqually Tribe and the Red Wind Casino for implementation of Phase II status on an unconditional basis. *Vote taken; motion passed with five aye votes.*

6. STAFF REPORT – Basic Law Enforcement Training/Special Agents:

Deputy Director Robert Berg noted he was pleased to be present because it's an exciting time at the Gambling Commission. He said the Commission has been on a roll since last fall when there was an agency conference and several initiatives were addressed dealing with the agency's special agents, the agency's approach to its regulatory role. Mr. Berg reported several action teams have been formed, including a team that has been looking into issues dealing with recruitment, retention, and remuneration of special agents, and a team dealing with an analysis of the agency's FTE needs based on the realities that the agency is facing right now. Staff just finished a review of the operating divisions to see what kind of structure should exist for the short term and long term.

The issue being addressed today has to do with law enforcement training for the special agents. In accordance with RCW 9.46.210, the Commission is a law enforcement agency, and as such the Commission's special agents are state law enforcement officers. The history and work of the Commission illustrated the need to combine two disparate disciplines; the discipline of accounting and auditing with the discipline of law enforcement. They are two very different disciplines and the agency tries to bring them together in the agency's special agents. Mr. Berg noted that given the regulatory role and the enforcement role of the agency, its greatest need is for excellent investigators, not necessarily certified public

accountants or certified police officers. He said the agency needed to get the best special agent possible by combining the law enforcement training coupled with the accounting and auditing training. Mr. Berg emphasized that its tough to get cops who want to be accountants or accountants who want to be cops. He believed that while having special agents with both certifications may be the ultimate in performing the duties or day-to-day work of the special agents, recruiting for individuals with talents in both disciplines, under the compensation the agency offers, is difficult, especially in a good economy.

Mr. Berg advised the issue of recruiting, job classification, and allocation of work along with the appropriate entry-level training has been a subject of discussion for the past 20 years with the Gambling Commission. He referred to a timeline of the law enforcement evolution of the Commission over the last 25 years. He also pointed out that the entrance requirements for a special agent are the strongest and highest of any law enforcement agency in the state of Washington. A bachelor's degree is required -- we search for people with certain types of training and in addition to that, the agency provides the law enforcement academy. Since the adoption of the one-agent concept in 1992, attendance at the Washington State Criminal Justice Training Commission's basic law enforcement academy has been mandatory for new agents with some exceptions. The exceptions include individuals with previous experience with the Washington State Patrol who went through the academy, or agents who have graduated from another state's criminal justice or law enforcement training academy, or agents who have graduated from the federal law enforcement training center, or agents who were hired after 1999 directly into the agency's Financial Investigations Unit (FIU). That unit undergoes its own regiment of approximately 286 hours of law enforcement training and agents are not sent to the Training Commission for law enforcement training. There are about eight agents in FIU out of a total complement approaching 100. All other new agents, with limited exceptions, go to the Training Commission's basic law enforcement academy and the agency's agents are allowed to attend on a space-available basis.

Mr. Berg pointed out that other limited law enforcement agencies such as Fish and Wildlife and the Liquor Control Board who, like the Gambling Commission, are the only three limited jurisdiction law enforcement agencies that are currently sending their agents to the Training Commission's basic law enforcement academy. That academy is designed and the Commission is mandated to provide basic law enforcement training to general authority law enforcement officers. The agency's employees are not mandated to go to the academy; they are "allowed" to attend the academy. As such, agency agents are not necessarily allowed to attend for free. The Training Commission, by policy, has chosen not to bill the agency for the cost of the agency's agents attending that training. Staff calculated that the academy would cost the agency about \$7,000 in hard-dollar costs, if we were charged. That is in addition to the costs that the agency would pay for the agent's salary while that agent attended. Currently those costs are at zero. Mr. Berg pointed out that the Training Commission has expanded its academy from 440 hours or 11 weeks to approximately 18 weeks or 720 hours. Because the agency is not paying the hard costs, the only cost it is absorbing is the cost in salary/benefits for the agent, which totals about \$17,000. If the Training Commission chose to start billing the agency, the total cost for a 720-hour academy would be \$25,000. Staff looked at what the academy offers, and found that probably 35 to 40 percent of that academy training is not applicable to the needs of the Gambling Commission's special agents. Training modules such as emergency vehicle operation, patrol procedures, traffic accident investigation, and traffic enforcement are not applicable to an agent's job duties.

This change in the basic law enforcement academy attendance requirement coupled with staff looking at what their needs were in terms of training agents, caused the agency to look at how we were training agents. To do this, staff contacted other limited law enforcement agencies such as the Parks Commission, the Washington State Liquor Control Board, Fish and Wildlife, the Utilities and Transportation Commission, and the Department of Natural Resources. There are several agencies in the state that have a limited law enforcement function and have limited law enforcement officers. The agency then conducted a survey and asked program managers and supervisors to ascertain their position on the needs for law enforcement training. That survey was supplemented by the agency wide survey undertaken approximately nine months later. Staff used the data, coupled with the comments from the other agencies and the Training Commission, to prepare for an in-depth discussion to answer the question of whether the Washington State Gambling Commission should continue to send special agents who do not possess a certificate of basic law enforcement training to the Criminal Justice Training Commission's basic law enforcement academy. Staff held an in-depth program managers meeting in February to discuss the issue and reached a consensus on that issue. That thirteen point Position Paper is included in the handout materials.

Mr. Berg explained that our agency has been advised by the Criminal Justice Training Commission that they currently have no plan to bill the Gambling Commission for the hard costs for the Commission's agents to attend the academy. Therefore, the investment at this point in time is approximately \$17,000 in salary and benefits. Staff has determined that the Training Commission would be more than willing to work with the agency in developing a specified course of instruction appropriate for the Commission's agents and agents with the Liquor Board. However, because they are on a space-available basis and their assets are being used for the basic law enforcement academy, we would have to pay the instructional costs and pay the per diem costs. Therefore, we can have the 720-hour freebie or the 400-hour academy that staff developed and would have to pay for -- either of which have staff costs while people are in training. Mr. Berg affirmed that staff continues to meet with the Training Commission and the Liquor Board to explore options available. He also affirmed the commissioners would be kept informed and that staff's goal is to provide the best special agent training possible while also looking at the business needs of the agency, and what it takes to do the job.

Chair McLaughlin asked why we couldn't cut out the parts of the training that don't fit the agency. **Mr. Berg** responded that was one of the first suggestions made to the Training Commission. However, because they have certain disciplines, ethics, and verbal communications that are interwoven in all the classes they teach, agencies are not allowed to cherry-pick the modules they would like because it breaks the militaristic class down. They put the classes into squads and intertwine the training throughout the 18-week experience. Agencies are not allowed to pick and choose the classes, however, they could develop their own academy, if the agency is willing to pay.

Commissioner Ludwig noted the academy basics had gone from 440 hours up to 720. Assuming that what we need is the 440-hour academy, Commissioner Ludwig asked if the salary savings would help or offset the instructional costs. **Mr. Berg** affirmed that the savings would be almost identical. He also reported that staff is unanimous in believing there is a need for third party certification. FIU has an internal a 286-hour curriculum certification process, which is not a third party certification. The big difference is that FIU agents are not armed and work in the headquarters environment.

Commissioner Orr noted that an internal credential may or may not be as valuable as a credential from the regular academy and may or may not impact our relationship with other policing agencies and questioned how they mesh. He emphasized the need to make sure that our credential meshes with the other agencies our agents work with. **Mr. Berg** explained that the current certification special agents receive when they graduate from the academy is called a certificate of basic law enforcement training. Being credentialed is important, however, it can make the agency vulnerable to local law enforcement agencies "robbing" our "cops." One of the issues under discussion is the skill sets that our agents need based on the environment in which they work now, and those skill sets are becoming more bifurcated. Mr. Berg believed that we must look at what is needed to do the job -- and whether the credential of training received puts the agent in the best position of doing that job and being respected/acknowledged by the other local law enforcement entities. Commissioner Orr responded that the other side of the debate relates to the fact that as an enforcement person enforcing RCWs and WACs pertinent to their job, one is also the protector of society as a police officer, and if an agent in a casino or card room observes a mugging or a carjacking, which badge will the special agent wear. Mr. Berg said that the limited enforcement authority is just that -- our statute says for the purposes of the enforcement of 9.46, our agents would either be a good witness, or intervene as a private citizen. On the other hand, the Department of Fish and Wildlife, which is another limited law enforcement agency, has an enforcement presence clause that basically says that if while acting in the scope of their authority another criminal law of the state of Washington is violated in their presence, they have all general jurisdiction authority to intervene and to act. The Gambling Commission does not have that statute. Mr. Berg emphasized that trying to find the right fit of training and to make sure that it is certified is the key issue. He cautioned that it is important to understand that the course the general authority officers need (the law of search and seizure, laws of evidence, criminal procedure, etc.), are applicable to a general enforcement authority and are applicable to 9.46 if a special agent is conducting a criminal investigation. What we don't need is the physical training, the emergency vehicle operations, accident investigation, and patrol procedures that are a part of the holistic academy.

Commissioner Forrest asked if our special agents flow to general law enforcement to become deputy sheriffs or city police officers. **Mr. Berg** affirmed. He reported that the agency's Recruitment, Retention, and Remuneration (RRR) Team has specifically analyzed where our agents are going, why they're leaving and the jobs they've actually gone to. Over a very compact period of time, the number of agents leaving to go to general enforcement authority agencies was significant. Stretched out over time, it becomes less significant. He noted that from about 1996 until now, our agency has grown by 25 to 35 percent in terms of special agents because of the card room program and the TLS program. People came into this agency and then saw the opportunity to move into general law enforcement opportunities. Mr.

Berg reported that the agency has done a couple of things to mitigate that situation. Local law enforcement agencies require academy attendance within the first six months of employment. Because our agency is not mandated to send people to the academy, we can send them anytime, or not at all. We've been downplaying the law enforcement role in our recruitment process and we have been keeping the special agents with us longer before we send them to the academy to see how they're fitting with the agency and to verify this is the kind of work we want them to do. We've already noticed an improvement.

Mr. Berg said he is not making a recommendation today, however, the study of this is sue and where it might lead is huge in terms of how we do business, and Director Bishop felt it appropriate that this information be shared with the commissioners. Mr. Berg noted the Commission has been operating under the assumption that the Training Commission was going to start charging us the per diem and pro rata costs and recently discovered they have no plans to charge us even though we received a letter indicating they would. Mr. Berg cautioned they could choose to commence charging at any time -- it's a policy call. Staff is simply trying to explore all the options. Staff consensus revealed that the best thing for the Gambling Commission would be to have a course of instruction, probably in partnership with the Liquor Board provided by the Training Commission that would lead to certification as a limited law enforcement officer for the purposes of what we do. **Commissioner Parker** said that sounded like good thinking. He addressed the comparison with Fish and Game agents who operate in isolated areas where they have to act like an all purpose law enforcement person because there's nobody else there, whereas, our people are in areas where there are other law enforcement officers generally available. He noted that casinos don't operate where there aren't people. In view of our special purpose organization, and as a general matter, he believed it was much more important to get agents who know the specialized nature of the Gambling Commission business rather than getting a graduate of an academy where the highest value is placed on being a SWAT team person.

Mr. Berg affirmed that in certain cases it's a unit-by-unit distinction within the agency. For example, our special investigation unit exclusively conducts undercover criminal investigations working with the FBI, United States Postal Service and the State Patrol. He advised those kinds of investigations may require different skill sets than some of our other work. The one-agent concept developed in 1992, was probably the right decision then, but it was designed to address the issues that existed back then. Other issues are being raised in 2001. Mr. Berg noted this is an on-going process and staff continues to work on it; we're continually responding to legislative changes and policy changes the Commission makes in order to find the right mix of regulatory, investigative and enforcement people.

Chair McLaughlin asked how many candidates did not want to work for this agency because they would have had to attend the academy. Mr. Berg responded that the agency has an approximate 30-40 percent failure rate at the physical agility test. We administer that test because we know the agent will have to pass that test to get in the academy. We do not give the agility test because it is job related. He further explained that when we decided to change the recruitment method and training for special agents assigned to our Financial Investigations Unit, individuals who had previously not been able to pass the physical agility test were able to work for us in the Financial Investigations Unit. There's no difference in pay, no difference in job title, and no difference in authority. The only difference is the agency provides the 286-hour curriculum law enforcement training for the Financial Investigations Unit special agents, and they are not armed, which is another regimen of training that the people who carry firearms must receive.

Commissioner Orr pointed out that as the Gambling Commission, we have the power to remove a licensee's livelihood, i.e. their license, and so the level of force compared to the level of enforcement is always the balance of power. **Mr. Berg** agreed and noted that we solve our crimes by getting to the finances and those kinds of things. He also believed the face of where our agents are going is changing because of the nature of where gambling and the type of gambling occurring is, and the emphasis of the work we do. House-banked and card rooms are being emphasized in terms of the agency's regulatory role. **Mr. Berg** noted that although the vast majority of the licensees do their job well, we are also finding issues and problems relating to professional betting and drug dealing in many of the licensed establishments. He believed those things were naturally going to occur when more of these kinds of licensed establishments come on line, which is reflective of society; and not any particular problem with our licensees.

Commissioner Forrest asked how many of our agents have had to draw a weapon or threaten to do so in the last five years. **Mr. Berg** said that with the exception of the special investigations unit, during his tenure with the agency, he only recalled one time where we've made a custodial arrest with a display of firearms. **Director Bishop** thanked Mr. Berg for a very good report. He said this is just a part of the many issues that staff is looking at. He reported that Sherri Winslow

is conducting a study pertaining to the type of work we will need to accomplish in 2001, compared to the things we did in the '70s '80s and '90s. From that, staff will be determining what type of employees we will need to do the required work, and then we'll revisit the training issue. Director Bishop affirmed staff would bring the reports forward over the next several months and provide recommendations on where the agency should focus.

7. OTHER BUSINESS/GENERAL DISCUSSION COMMENTS FROM THE PUBLIC:

Chair McLaughlin called for comments from the public, her fellow Commissioners and staff. There were no comments.

8. EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS AND LITIGATION:

Chair McLaughlin recessed the meeting at 3:20 p.m., and called for 15-minute executive session. Chair McLaughlin advised that no further business would be conducted.

9. ADJOURNMENT:

At 3:45p.m. **Chair McLaughlin** declared the meeting adjourned until 9.30 a.m., March 9, 2001.

**COMMISSION MEETING
FRIDAY, MARCH 9, 2001
MINUTES**

Chair McLaughlin called the meeting to order at 9:30 a.m., at the DoubleTree Hotel in Pasco. The following attendees were in attendance:

MEMBERS PRESENT:

**COMMISSIONER LIZ McLAUGHLIN, CHAIR;
COMMISSIONER GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;**

OTHERS PRESENT:

**BEN BISHOP, Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
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DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

1. MINUTES – February 8 & 9, 2001, Olympia Meeting

Commissioner Orr made a motion seconded by Commissioner Ludwig to adopt the minutes of the February 8 and 9, 2001, meeting as presented. Vote taken; motion carried with four aye votes.

2. STAFF REPORT – LEGISLATIVE UPDATE:

Deputy Director Ed Fleisher reported that the Legislature still has not returned to the Capitol Building, but they are in session again. There are six bills that are still alive after the first cutoff to get bills out of their initial committee.

Electronic Bingo - SB 1446/HB5429 – Passed out of committee in the House in a substitute form. The bill allowed charities to have up to 200 machines and to operate them seven days a week. The substitute bill passed out of committee and is now in House Rules. It allows up to 50 machines per location and operation five days a week. There was also some language added to clarify that this should not authorize any form of slot machine-type device. **Chair McLaughlin** asked what Mr. Fleisher thought would happen on this bill. Mr. Fleisher said it looked like it will clear the House, but it had a hearing in the Senate and didn't pass it out. It's still questionable what will happen in the Senate.

Substitute House Bill 1384 – A bill on executive sessions for commissions. It has passed out of committee, and has been amended. The original bill had provisions that required notice to be given of certain executive sessions, the subject matter stated, and that minutes be recorded. Those provisions were taken out and now the bill simply clarifies when an agency can go into executive session.

Cheating at Gambling - SB 5064/HB1307 – This agency request bill passed out of Senate Rules yesterday and is on the Senate floor calendar. It should be acted on within the next few days.

Substitute Senate Bill 5403 – This is a bill that is expected to pass. It reauthorizes the ability of agencies to do an expedited rulemaking process. The existing statute is about to expire and this simply reauthorizes the process.

Substitute Senate Bill 5573 – A bill introduced to add student groups in public schools and public hospital districts to the groups that may conduct raffles. The bill as passed out from Senate Rules now covers only student groups and has been amended to clarify which student groups qualify. The original bill just said student groups – it didn't define them. The Superintendent of Public Instruction's Office suggested some language, and the substitute bill limits it to student groups recognized by a school district under the rules adopted by the school district and requires that the money raised by the raffles be run through the books of the associated student body so there will be a financial trail of the funds.

SB 5905 - The waiver of sovereign immunity bill has passed out of committee in the Senate and was moved to the floor calendar yesterday. Mr. Fleisher expected the Senate to act on the bill within the next few days.

Chair McLaughlin called for audience and Commissioner comments. There were none.

3. **RULE UP FOR DISCUSSION – WAC 230-46-080:**

Electronic Gambling Equipment used in Promotional Contests of Chance

Ms. Patjens, Communications and Legal Department, asked that this rule be withdrawn. It is the third time it has been on the agenda. Last session, there was a bill that had rewritten the promotional contest of chance law. It stated that equipment or devices made for use in gambling equipment are prohibited from use in a promotional contest unless authorized by the Commission. Subsequently, a licensee, Tab Wizard, created a system for promotional contests of chance that didn't have handles, but looked a lot like a gambling device. Staff wasn't comfortable with the proposal – and the initial goal was to have some type of guideline for these types of devices, so that each device would not have to come before the Commission, it could go to the director instead. Some comments were received from the owner of Tab Wizard as well as from Julie Porter, who worked extensively on the promotional contest of chance law last year. One of the concerns was that it was really too broad in the things it prohibited. It prohibited any type of a video terminal that, in effect, could be any type of computer that has some type of video display. Staff determined that the problem was figuring out whether it was being used as a gambling device or not, and that staff would have to look at this on a case-by-case basis. Coming up with certain criteria was not going to work -- if it's not a gambling device, then the rule doesn't even apply. Therefore, if a company created something especially for a promotional contest of chance, they wouldn't even need to come to the Commission for approval. Ms. Patjens said for those reasons staff is asking that the rule simply be withdrawn. By withdrawing the rule, the Commission would not be hurting anyone because we would continue to review issues on a case-by-case basis rather than have parameters.

Commissioner Forrest asked how staff thought the Commission should approach deciding whether a device is a gambling device or not, and whether or not we would allow it. **Mr. Fleisher** said there is a detailed definition of what a gambling device is in the RCW. Staff decided they couldn't write a rule that would be any clearer than the statute, and hopefully there wouldn't be too many of these cases to decide. The problem relates to the recent development of computers and electronics. It used to be easy to say what a mechanical gambling device was – it's becoming harder and harder in the computer age. The statute we follow was written 25 years ago and is not quite up to date with modern technology. Commissioner Forrest responded that he could understand why we say certain promotional things are permissible. He asked what difference it would make if it were a gambling device if there's no consideration and it's a typical thing. **Director Bishop** said the problem (going back to IGRA), is when we get into any activity that is authorized for any person, for any reason. Therefore, if a slot machine is allowed to be used in a promotional contest of chance, would that be an authorized activity under IGRA? He believed that would be a real problem. Gambling devices are very tightly controlled in our state, and he urged caution before moving into an area outside of that realm of control. He emphasized the agency is trying to get away from controlling and regulating these activities. Commissioner Forrest agreed if it's in the RCW, it's obvious we have to live with it, however, he wouldn't care if in the promotional game of chance they picked the winner by a slot machine. **Mr. Fleisher** responded that possession of a slot machine in the state, if it's less than 25 years old, whether it is played for money or not, is illegal. Commissioner Forrest said he understood that, and asked if we should care (it's sort of a gambling device in the common sense) -- we are trying to pick a winner by chance, and he didn't see why we have any particular concern over the mechanism other than what the statute

indicates. **Director Bishop** asked if the Commission wanted to move in that direction by policy, and noted his objective was to get out of that particular business. **Mr. Fleisher** explained that a promotional contest of chance has an element of chance in it and exactly what device is used to determine the chance itself should not be a big policy concern; staff was more concerned about dealing with the slot machine issue. **Commissioner Forrest** believed it was a good idea not to attack the rule since it seemed like the rule created more of a problem than it solved. Director Bishop agreed.

Commissioner Forrest made a motion seconded by **Commissioner Ludwig** to withdraw the proposed rule for electronic gambling equipment used in promotional contests of chance. *Vote taken; the motion passed unanimously.*

Rules Up for Discussion and Possible Filing

4. Electronic Facsimiles of Cards: WAC 230-40-010; WAC 230-40-070:

Amy Patjens, Manager, Communications and Legal Department, explained the system being discussed is called Digideal. A couple of years ago, the manufacturer demonstrated the machine to the Commissioners. Since then, the company has been licensed in Nevada. The manufacturer's attorney, Kent Caputo, is available to respond to questions. Ms. Patjens explained that Mr. Caputo approached staff a few months ago and asked them to look at this and whether it was something that could be brought forward as a rule or whether staff would prefer them to go through the rulemaking petition process. She explained that when there is a petition for rulemaking, it sets forth other procedural deadlines that must be met. Rather than have the licensee petition for a rule change, it was suggested that staff bring this proposal forward. She then reviewed the rules:

Rule 4(a) currently states that social card games must be played with one or more "standard decks" of playing cards, which staff have interpreted as meaning the traditional paper cards. In order for this system to be allowed, the rule would need to be amended to include electronic card facsimiles as another method by which people could play social card games.

Rule 4(b) is the rule that actually has most of the changes. It would allow the director to approve electronic card facsimiles as long as certain conditions were met; including that the system would be tested by a licensed gaming testing laboratory to make sure that it had accurate facsimiles of cards, that it would randomly shuffle the cards, that it would have certain security protocols to insure against unauthorized access, and provide a way to test the software as well as the additional requirement that any other additional technical standards required by the Commission would also be met. The manufacturer would pay all of the testing costs. She noted the agency conducts similar testing for the Tribal Lottery System, and this particular component is certainly not new to the Commission. There is a company already licensed called Gaming Laboratory International that does this type of testing. Ms. Patjens said staff recommends filing the rule for further discussion. She affirmed that whether or not to allow the electronic facsimiles of cards is a policy call. Currently there are only standards for hard cards for social card games.

Commissioner Ludwig asked if we are getting close to video Poker when Blackjack is being played by use of a video-type display. **Mr. Fleisher** believed not because when using an electronic deck of cards, one is still playing at a standard table with the dealer and the chips being facilitated in the traditional manner. With a video Poker machine, one is playing against the random number generator in the machine. This has about as many characteristics of a traditional game on one hand and then the electronic cards on the other, but it would not fit the definition of a slot machine or a gambling device in the statute, which talks about the insertion of money and an element of chance returning a different amount of money than what was put in the machine. Commissioner Ludwig said based on Mr. Fleisher's explanation, he thought the dealers' cards were also randomly chosen. Mr. Fleisher responded that all the cards were randomly chosen. Commissioner Ludwig responded that one would be playing against the random video selection whether a dealer's standing there or whether it's a machine. **Director Bishop** believed the key was that one shuffles the deck of cards and they are cut and set. The same occurs with the facsimiles, the cards are shuffled, cut and set. As one deals the cards, it would be no different than a regular Blackjack game. If you ask for a hit, it doesn't go in and randomize all the cards and give you one; it takes the one off the top. **Commissioner Ludwig** addressed the concern about video Blackjack being done by anybody at any time, and asked if this might give the tribal casinos an opportunity to say they want to put their games on a video monitor and to shuffle every time.

Jerry Ackerman, Assistant Attorney General, responded that his understanding is that the differentiating factor with the Digideal game is that there are still a finite number of cards. They're in an electronic format, but it's the same thing as a deck of card in the sense that there are 52 cards in a deck, and you don't randomly pick among those 52 cards every time a hand is dealt. You deal them all out until they're all gone -- so it doesn't rely upon the random number generator for each hand dealt. **Chair McLaughlin** asked how video Poker worked. Mr. Ackerman indicated that it was his understanding that it used the random number generator element. **Director Bishop** advised that one would expect that in the video Poker scenario, the player would be playing against the machine. If a game could be developed whereby six or seven people could sit around in a circle, and they could determine what they wanted to bet or if they wanted to call, and they only used the electronic random number generator instead of the cards themselves, he believed that could be determined to be Poker. The difference is whether one is playing against the machine, one-on-one against it, versus playing against other players. **Commissioner Ludwig** noted that at a Blackjack table, one isn't playing against their fellow players; they're playing against the dealer and the house. Director Bishop affirmed that's the difference between a house-banked game. Right now, Blackjack and Poker is being played against the House, but in this case the House has the cards set and is one-on-one.

Mr. Fleisher noted the characteristic of there being numbers generated randomly is only one element of whether you have an electronic gambling device. **Mr. Ackerman** agreed and said the distinguishing characteristic for this game, as it was described to him, is that they shuffle the cards, and in that sense they use a random number generator. However, once they have done that, they have a finite set of cards -- it's set and people play until those cards are used up. In that sense, one is playing much like the tribal lottery machine, against a finite set of pulls and it's only reshuffled once the game is done. **Commissioner Orr** noted that when one plays Blackjack, they play either a boot, a shoe, or a single deck -- and you know what cards are there. No one, whether they have a deck of cards or a shoe, or a machine, reshuffles the deck every time as you would with a random selection. Commissioner Orr suggested that the International Gaming Lab should provide the Commission with a report explaining the system to alleviate the expressed concerns. He went on to say that when he saw the demonstration, it appeared to him that it was a lot like playing out of a shoe -- it wasn't a random selection; it was a deck of cards or a series of decks of cards.

Kent Caputo, Attorney for Miller Nash, and representative for Digideal Corporation, said the issue from the corporation's perspective is the issue of standard decks of playing cards of conventional size and design. He said he could attempt to make the argument that the Digideal System meets that requirement and this is really a question of interpretation whether it's a standard deck, or depending on the game, the standard deck for the game. He advised that agency staff had fairly interpreted the rule to mean that it's made out of paper, plastic, wood, metal or linoleum or something else rather than an electronic facsimile. Whether they would want to agree with that interpretation is part of the debate. He explained this is a card game where players sit at the table and have a dealer bet with chips. There's no pushing of buttons; there's no reasonable interpretation that a player would have the perception that they're playing against a device or playing a machine. The fair perception from a player's standpoint is they believe that they are merely having their cards dealt from the shoe the same as they would with a material card, but they're still playing against that dealer.

Chair McLaughlin asked how expensive this machine was. **Mr. Caputo** advised he didn't have that figure. Chair McLaughlin asked if there would be a chance this would be outside the 15 tables. Mr. Caputo responded that is not the intent of Digideal and certainly not his intent on behalf of any other client. In fact, it is quite the opposite, they have made every effort to make it clear that this is a shoe or deck -- just like material cards. The difference being that at the end of the random number generation, the cards are shuffled and placed into the shoe. At that point, all play is ordinal just like a traditional game. **Commissioner Forrest** said his only concern is that for hundreds of years we've been trusting players and watching dealers to make sure that they don't take a couple of aces out before they start dealing hands. There would be no visual way of knowing that a machine hasn't removed a couple of aces, unless they tested the machine and said the impact was minimal. He thought they would want a more aggressive way of testing the machines from time to time, or whether the Commission should require the machine to be built in such a way that agents could come in at any time, plug in and verify there are 52 cards. Commissioner Forrest believed these things needed to be thoroughly examined because the risk or the possibility of doctoring the cards, unknown to the players, is much greater in this type of a machine than in the traditional dealing of physical cards. **Mr. Fleisher** affirmed that would be the intent should the Commission choose to pass this rule. The laboratory testing listed in (A) and in (C)(1)(e) says it must provide a means of testing the computer software. Staff's intent would be that everything is lab-tested -- and that the lab gives the agency a unique software signature so our agents could log a device into the computer and test the software that's

being run to be sure it is the identical software that was approved by the lab. **Mr. Berg** advised there would also be some issues under the current rules for various house-banked card games that when certain prizes are won, certain things occur pursuant to the Commission's rules and the facilities' internal controls. Decks are taken out of play, tapes are saved to verify those things, etc., and staff would also have to make sure that is properly addressed.

Director Bishop noted that from a regulatory perspective, a lot of the dealer/player collusion issues go away. The dealer has absolutely no means of getting to that card -- and if that issue goes away, when someone says, "hit," the card comes out and it can't be withdrawn. Now, if someone says, "hit" and that breaks him, if a dealer is in collusion he may ask the next guy if the card would be help. Those types of issues go away with this system, so there are some plusses from a regulatory perspective.

Commissioner Orr believed there are significant amounts of cheating and unintentional accidents of overpay and underpayment. He expressed his desire to have the lab provide a report that assures the Commission it's an up-front game. **Chair McLaughlin** asked if the rule was filed, would staff have someone from GLI attend the next meeting.

Director Bishop said they could try, however, that's a cost he would have to discuss with Mr. Caputo. **Mr. Caputo** responded that the rule as written, would require them to foot the cost for testing once this rule was approved. Right now, he is only coming forward to have the game approved. Commissioner Orr interjected that all he is asking for is for GLI to address the Commission's concerns by letter. He also asked for staff's reassurance that if in fact the Commission approved this game, the concerns would be corrected or alleviated by GLI. **Mr. Fleisher** pointed out that Mr. Caputo had intended to have their technical people come to the next meeting to answer questions and they could certainly contact GLI. He believed the Nevada version of this machine has already been through the GLI lab. Commissioner Orr believed the manufacturer would be able to answer many of his questions. Mr. Fleisher noted that if the Commission adopts this rule, that in itself is not an approval of the Digideal machine. The kinds of requirements and the things that we will want the lab to check for us and certify that they are working on would occur later. He suggested that maybe the most important part of the rule from that point of view is C (1) (f), which would require they meet any additional technical standards required by the Commission, and as we do with the TLS. Mr. Caputo affirmed that Digideal would work with the staff and GLI to get as much additional information and assurances as they could for the next meeting. He indicated that he would also have a table and Digideal technical staff available to answer questions at the next meeting.

Mr. Ackerman believed Mr. Fleisher's point was very important -- the proposed amendments to .070 aren't rules that would allow Digideal; it is a neutral regulatory regime that would apply to anyone that would want to come forward with a similar type of device. Basically, what it says is the device will have to be auditable and satisfy the concerns that Commissioner Orr has been raising. It alters the definition of standard playing cards to allow something like this if it can be done in a way that addresses the regulatory issues that Commissioner Orr has raised, and that Director Bishop, Mr. Fleisher, and staff would have to deal with if these devices were permitted. **Commissioner Ludwig** said he is not opposed to the rule. His concern was to be overly cautious that this isn't the bottom rung of the ladder starting to go up that ladder toward video Poker. He just wanted to be sure the commission didn't do that. **Mr. Caputo** said they've worked hard to try to make sure they are keeping this game and the way it's played as far away from that line as they can. **Commissioner Orr** believed there would be a certain amount of people who are going to enjoy this and a certain amount of people who are absolutely going to be nervous about it and stay with traditional Blackjack. He didn't think this would adversely impact the card players or the card room owners.

Commissioner Forrest made a motion seconded by **Commissioner Ludwig** to file the proposed rule. **Chair McLaughlin** called for public comments. There were none. *Vote taken; motion carried with four aye votes.*

5. Petition for Rule Change by William Krapf - WAC 230-04-190:

Amy Patjens, Manager, Communications and Legal Department, explained that any member of the public may file a petition for a rule change. Often licensees file these, which was the case here. Mr. Krapf is the owner of the Buena Tavern located in Yakima County. She referred to the letter contained in the Commission packet. Currently, licensees who have a license fee of \$1,200 or more can pay half of their license fee at the beginning of the year and then the other half after the six months. This is called a two-part payment plan. Currently about 700 licensees do this. Mr. Krapf is asking that this threshold amount be reduced to \$800. He is a small business owner, and he noted there is a lot of competition right now in his area from the Yakama Tribe, and there have been changes in fire codes and liquor laws which have made things very hard for him as a small business owner. Ms. Patjens affirmed this change would make

about 80 more licensees eligible for the two-part payment plan. That is not significant when compared to the 700 licensees already doing this. **Ms. Patjens** noted that not every licensee eligible would necessarily choose to take advantage of the two-part payment plan. There is an additional \$26 fee if someone wants to participate in this plan. Mr. Krapf had called several staff members to explain his concerns about small businesses and the competition. He asked about the possibility of having the license fees decreased, and staff affirmed they had no plans to consider decreasing license fees. Ms. Patjens noted the commission packet contains a memorandum detailing options for dealing with petitions, and staff recommends the first option, which is filing this rule for further discussion. Mr. Krapf was not able to attend.

Commissioner Ludwig noted the summary indicates the potential agency impact would be minimal. He asked if the additional \$26 administrative fee covered the administrative work required to split the payments. **Mr. Fries** affirmed. He noted that when it was originally initiated in the late '80s or early '90s, the threshold amount was \$800, which is what Mr. Krapf is asking for. The Commission raised the amount to \$1,200 during a growth period. He affirmed the impact for this change would be 80 to 100 participants.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to file this petition for further discussion. *Vote taken; motion passed with four aye votes.*

6. Other Business/General Discussion/ Comments from the Public

Bob Tull, Attorney for the Recreational Gaming Association, came before the Commission to update the Commissioners on some of the factors affecting the card room businesses in the state of Washington. He noted that over the years, the Commission has had to deal with issues such as betting limits, Pull-Tab prices, and betting limits for the tribes. He suggested that in the near future, he might come forward with a petition from his clients for an adjustment in the betting limits. He affirmed there are strong business reasons that support an adjustment in the betting limits. Higher limits than the current \$100 limits exist successfully in the tribal casinos and that there haven't been many difficulties associated with higher limits per se. The RGA wanted the Commission to understand their business setting and then hoped to address some of the additional issues. The RGA's continuing contacts with Commission staff reveals that they do not see regulatory problems associated with adjusting betting limits. Mr. Tull invited Mr. Murray to come forward to present financial information.

Gary Murray, Wizards Casino of Burien, reported that in 1998, he began putting together a business plan for Wizards. He established a complex business plan to investors that outlined all the expenses they could anticipate in running a business of this nature. Wizards opened in early 1999. Mr. Murray noted that had they been open all of 1999, averaging the hours, they would have had a total number of work hours (dealers only) of 88,368. At that time, the minimum wage rate was \$5.70 an hour. He noted there's an additional payroll burden of 12 percent for direct payroll taxes that are associated with every dollar paid in wages. The total dollar figure for 1999 was \$564,000. The minimum wage was increased to \$6.50 per hour in year 2000. If the 1999 hour model were applied to the year 2000, with the minimum wage increase, the total dollar figure would be \$643,000, which is a total increase of \$79,000 for that one year. In year 2001, the new minimum wage is \$6.72 per hour for an estimated total (using the 1999 hour model) of \$665,000, an increase of \$21,000. Another increase is projected for year 2002 which is expected to raise the dollar figure another \$20,000. Mr. Murray indicated that it is not just the daily or yearly increases that need to be considered, it's the added costs that compound every year. He advised that the difference between the 1999 base and year 2001, would be somewhere in the area of \$120,000. He indicated there would be a three-year impact from 1999 to 2002 of \$332,000 (relating directly to increased minimum wages for the existing dealers), and there wasn't any way to pass the costs to the customers. He further clarified they can't raise the cost of the gaming chip or the games they provide; the only thing they can do is market their product better, and the broader they can make the product, the better chance they have of surviving.

Mr. Murray said that Wizards ranked 20th in revenue generating of the 56 total enhanced card rooms for the third quarter in 2000. During that year, they booked a profit of \$145,000. He estimated that at this rate, within two years they would not be profitable. Since 1999 and through year 2001, the minimum wage went up 20 percent. Mr. Murray noted that when he went into this business, he didn't realize the minimum wage impacts.

Steve Griffiths, PJ Pockets Casino, Federal Way, pointed out this affects virtually every organization. They conducted an analysis last year and estimated that it would cost them \$10,000 a month just for the minimum wage increases. Mr.

Griffiths addressed insurance costs and reported that originally their industry provided full coverage for their employees. Last year, they had a 32 percent increase (\$28,000 over their original costs), and made a decision to share some of those costs with employees. Ultimately, they passed 10 percent of the costs to the employees. The industry is now being advised to anticipate another 20 percent increase. Coincidentally, as a result of the recent earthquake, his insurance broker also indicated that insurance companies might be increasing their premiums. These are costs that the industry has no way of passing on to other consumers or recouping. **Chair McLaughlin** asked him to acknowledge that other businesses have these same problems. Mr. Griffiths agreed, however, he affirmed many businesses could pass these costs on. Restaurants can raise the price of food, drink prices can go up and retail prices go up. In the gaming business, they can't raise the game limits themselves or the amount of money they get from the games. They are restricted based on current betting limits and based on the methodology of the games. Chair McLaughlin asked what was his last year net profit was for his fifteen tables. Mr. Griffiths thought it was \$600,000 or 27 percent, which is an industry standard. Mr. Griffiths clarified this wasn't just tables because the revenues are disbursed among administrative, surveillance, security costs and other support services. He noted that after they paid their taxes, their debt service and over \$1 million to the city of Federal Way, he didn't think they made any profit.

Mr. Griffiths said he realized it's not the responsibility of the Commission to ensure that businesses succeed, but, what they are trying to say is they do have problems, and the industry wanted to make the Commission aware, and to ask the Commission to be open minded about potential solutions. **Bob Tull** affirmed these are complicated but explainable things and they wanted to know the Commission's level of interest so they could help explain the issues if there is interest. One issue they would like to address is what would happen if increased betting limits were approved. What if the limits were the same as the tribes? How would that affect the particular businesses? He believed that it could become important to market to a particular player or to a particular segment of the player market. After four years into house banking program, a lot of people are beginning to understand the true impact and the true difficulty of some of the taxing structures. He wanted the Commission to be aware of the different costs that are pushing the industry and the marketplace. Mr. Tull noted that some players want to play at the higher level, and if they can only get that at a compact casino, then that is where they will go, or they'll go on to Nevada or Oregon. He believed some percentage of those higher-limit players would be willing to stay local and that they would have an enormous positive impact on the operation of that business. Life gets better as the volume goes up -- the percentage may only be two percent in certain businesses or the one percent of a grocery store, however, if you can get the volume up, the operator can do a lot better. Mr. Tull advised that his goal would be to come back with an overview of the regulatory issues or non issues as they currently perceive them and to ask the Commission for their consideration of granting more flexibility on how the product is priced. This morning, the RGA is simply asking for an indication that the Commission will continue to be open to information, and whether there are any specific items they would like to have addressed in the future.

Commissioner Forrest believed that over the last year, the minimum wage went up less than the cost of living, and in fact, the person earning the minimum wage was worse off after the raise than he was before the raise, if the cost of living is a fair measure of what it costs to live. **Mr. Tull** reminded everyone that despite the fact dealers make a lot more than minimum wage, they've had to be treated as if they were only making minimum wages. **Mr. Murray** affirmed that the dealers are making an average of \$40,000 a year. Commissioner Forrest questioned what the minimum wage has to do with anything if the dealers are making \$10 to 15 an hour or \$10 an hour. Mr. Tull responded that operators have had to increase their minimum wage because of the state law. Commissioner Forrest responded that if the complaint is that the minimum wage is making the operator go broke, that isn't the same argument as the guy who's earning the minimum wage losing money because his minimum wage increase was less than his increase in costs of living. Mr. Murray explained the dealers he employs make an additional income, they are not at poverty level, and that minimum wage increases were a direct cost to him. This state does not recognize tips as part of the earned wage as other states do. Commissioner Forrest verified the dealers are paid at minimum wage and Mr. Murray affirmed. **Mr. Murray** explained that the state forced them to pay people who are making a good living wage even more money, and the total impact to the licensee is that approximately 50 percent of their employees are in the minimum wage category. Over three years, the minimum wage increases cost them \$336,000. The affected people in his establishment earn between \$30,000 and \$50,000 a year including their tips. He emphasized this is a forced raise -- it's not something licensees can ever reduce.

Chair McLaughlin asked Mr. Murray when his establishment received their \$100 betting limits. **Mr. Murray** replied that it was in late 1999 -- that in the year 2000, his establishment made \$145,000. In the seven months they were at the \$25 betting limits, he believed they operated at a net loss. **Commissioner Ludwig** asked for clarification on what he pays their employees **Mr. Murray** responded that dealers and wait staff are minimum wage earners, pit bosses shift

managers, casino managers, surveillance people, and security staff make more than dealers. **Mr. Murray** affirmed they pay the dealers minimum wages, and they can barely afford to do that, and they are required to raise their wage every year because of minimum wage requirements. **Commissioner Ludwig** asked if the industry is paying their dealers the same salary that McDonald's is paying their counter help and Mr. Murray affirmed. Commissioner Ludwig noted they could choose to pay more than a minimum wage in order to get crackerjack employees. Mr. Murray affirmed that they pay more for the supervisory positions. If the dealer does a better job, they get paid more through tips. Commissioner Ludwig found it surprising that in a competitive market they are only paying minimum wages. **Chair McLaughlin** asked about their wait staff and was advised that an owner can adjust the cost of their food to cover the increased expenses. Mr. Murray noted that as minimum wages are increased, it also affects other positions and pay scales, it ratchets up the entire wage structure. Chair McLaughlin said that was true for any business.

Mr. Tull addressed Commissioner Ludwig's concern about the wage situation and indicated that it is certainly possible the industry will continue to see evolution where dealers may be so skilled, so good and so popular that they'll get signing bonuses or other incentives. In certain situations in other jurisdictions, certain people who have a following do command more money. The point for this wage discussion today, is that despite the fact the dealers make good money, licensees are affected because of the way the law integrates the increases. Mr. Tull affirmed the RGA has other issues they will be bringing before the Commission, and they will try to put it into a bigger context. Mr. Tull believed in certain communities the industry would experience operators being faced more and more with the impact of whether tip pooling is required, allowed, or forbidden. That will cause movement back and forth. Other employment practices have a big impact as well and dealers will be drawn to the more popular places. He agreed there is competition within the industry relating to the benefits that are offered. Some clubs offer better benefit packages than others -- that combined with other business factors will allow dealers to pick and choose where they want to work. The irony is that the costs are forced on the operator side strictly because of the way this state has not dealt with the tip credit issue. **Commissioner Orr** affirmed that we live in a changing environment and that it is a very complicated society. He noted that what we do and say may or may not be a band-aid to fix the problems and there are many sides to this debate.

Mr. Tull affirmed the RGA believes the Commission doesn't have a regulatory basis for concern having to do with betting limits -- at least not within the limits that are known in the state. It hasn't transformed the landscape to have the tribes operate at the higher levels. The tribes were able to convince prior commissions that the business case required more flexibility. It becomes a marketing and pricing type of thing. Mr. Tull felt the Commission's role was to decide which issues are most important, they get sorted out, and what information is necessary to do the prioritization. He believed the RGA's job is to help the Commission understand the business of their operators and how it has evolved in the past four years, and to explore solutions. He thought an immediate increase in betting limits would have a great impact on some operators, some impact on a number of operators, and no impact on others. **Commissioner Forrest** said he's delighted the RGA has raised this issue because it is a fundamental issue the Commission should resolve as a matter of policy. Should betting limits be primarily regarded as an opportunity for the public to exercise their privilege to bet more money and have more fun? Or, is it primarily something to sustain an industry? At some point he believed that the Commission ought to establish a basic principle to either try and judge betting limits on what the public deserves as an opportunity, which he believed was the original argument for having card rooms in the first place, or, betting limits should be influenced substantially if not primarily by the profit of the industry. He believed that as a matter of policy, when the RGA comes back at some point, those two arguments need to be made distinctly. The Commission will have to decide whether both, or only one, or neither should be considered. **Chair McLaughlin** affirmed the Commission's primary job is to regulate the industry for the safety of the public, and she believed it's their job to look at this from that viewpoint. **Mr. Tull** affirmed that protection from harm is the main thing, and the Legislature clearly said the Commission would set the betting limits.

Chair McLaughlin asked why the Commission set the limits when they are defined by RCW. **Mr. Tull** affirmed. Chair McLaughlin suggested that the Legislature might take over that role. Mr. Tull responded that they would rather ask that the RGA take over that role.

Mr. Don Kaufman, Big Brothers/Big Sisters, expressed sympathy for the issues being addressed, and hoped the Commission would have more sympathy for what the nonprofits are facing when they looked at the numbers contained in the Commission's financial report ending June 30, 2000. He indicated that it was hard for him to have too much sympathy for an industry that saw their gross earnings go up by \$77 million last year while the nonprofits dropped by \$5 million in the same period of time. The report outlines 1997 through the year 2000 and he felt it was eye-opening for

several reasons. In 1997, the card room net was \$5,200,000 and the total net for all gambling was \$70 million. In year 2000, that net rose by \$32 million up to \$102 million. The card room net went up \$39 million. They not only got all of the net increase of the \$32 million, but they took \$7 million away from other entities that are competing for nonprofit activities, pull-tabs, amusement games, raffles and etc. **Mr. Kaufman** noted the nonprofit net went from \$13,800,000 down to \$9,600,000. He asked the Commission to visualize a nonprofit who also gets hit by the same 22 cent an hour increase and is losing money in gross revenues at the same time--that's a real impact. When there is new income of \$77 million, one can make ends meet. When you're losing \$5 million in gross revenues in one year and get hit by a 22 cent an hour increase in wages, it tough to try and make those ends meet. He emphasized that this is why nonprofits need the electronic Bingo games they have asked the Legislature to help them with, and they certainly need the Commission's help in letting those legislators know how important that role is. The nonprofits are not trying to expand gambling; they are trying to hang on to something that has existed since 1973 and was the focal point of the 1973 charity gaming legislation. **Chair McLaughlin** said the Commission supports the nonprofits and noted that some of the Commissioners have met with legislators over this issue.

Chris Kealy, Jimmy G's Casino, responded that he had written several letters on the Bingo issue as well. He indicated that he could not buy into the fact that the increased \$77 million in the card room industry as suggested by Mr. Kaufman was at the expense of Bingo. He believed that we're focused on the wrong denominator – looking at Bingo's gross receipts instead of the net win. He thought if they were empowered to utilize the net win differently, as a percentage of income, it would be the sole single reason that Bingo is dying. It requires too much of a win per dollar. He thought the focus was on the gross gaming dollar and not the net win – which makes it “not a fun game.” It's why Pull-tabs are dying; and it's why Bingo is dying. Mr. Kealy offered a counterpoint on the \$77 million increase in card rooms and emphasized that the Bingo people shouldn't forget that the top 10 card room owners and the people that are making money are being responsible and that they give a lot of money to charity. He double-checked some of his own numbers and noted that their for-profit mini casino is putting out more charitable dollars into the community than most of the Bingo operations, and that it was a direct fee. He believed that if one had a mission that was worth supporting for the public in a charitable sense, they could go ask for the money. He encouraged the nonprofits to stop trying to earn the money through business whether it's selling tires, Bingo, or gaming. He believed a lot of nonprofits get caught up in the business activities to get dollars when they could simply go to the profitable businesses and ask for money.

Chair McLaughlin asked if there were any additional public comments. There were none.

7. Adjournment

At 11:10 a.m., **Chair McLaughlin** recessed the public meeting and called for an executive session to discuss personnel issues. She noted no further business would be conducted following the Executive Session. Chair McLaughlin called the open public meeting back to order at 11:35 a.m., and adjourned the meeting.

Minutes submitted to the Commission for approval by:

Shirley Corbett
Executive Assistant